

E-FILED - 10/5/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENE HAMILTON,)	No. C 10-1436 RMW (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL
)	
v.)	
)	
NURSE DEBRA TYLER, et al.,)	
)	
Defendants.)	

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. On May 11, 2010, the court dismissed the complaint with leave to amend to revise his allegations to comply with Rule 8(a) of the Federal Rules of Civil Procedure. On June 1, 2010, plaintiff filed an amended complaint. On August 2, 2010, the court dismissed the amended complaint with leave to amend, noting that while plaintiff had modified his complaint, it was still unintelligible and failed to comply with Rule 8(a). On September 1, 2010, plaintiff filed a second amended complaint.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss

any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only ““give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007) (per curium) (citations omitted). A complaint must proffer “enough facts to state a claim for relief that is plausible on its face.” Id. at 1974.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

B. Analysis

In the court’s May 11, 2010 order, it instructed plaintiff to “state each claim separately, and for each separately claimed violation of his constitutional rights, [plaintiff] must state what occurred and the date(s) on which the events occurred. He also must identify each defendant he proposes to hold liable for each claim, and allege facts showing what each of those persons did or failed to do that violated his constitutional rights.” In plaintiff’s amended complaint, although plaintiff attempted to state each claim separately and shorten his claims, he still failed to describe the alleged events that occurred. Plaintiff did not identify any supporting facts showing what each of the defendants did or did not do that violated his rights.

1 In the court's August 2, 2010 order, it again observed that plaintiff's claims failed to
 2 allege specific facts rather than conclusions. The court specifically advised plaintiff that "in
 3 order to state a claim for relief, plaintiff must allege facts demonstrating that acts by *each* named
 4 defendant deprived him of a protected right. He may not allege in summary fashion that his
 5 constitutional rights were violated by named defendants." In plaintiff's second amended
 6 complaint, he again falls short of complying with Rule 8(a).

7 Federal Rule of Civil Procedure 8(a) requires that the complaint set forth "a short and
 8 plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e) requires that
 9 each averment of a pleading be "simple, concise, and direct," and the failure to adhere to this
 10 requirement may be the basis for dismissal. McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir.
 11 1996) (affirming dismissal of complaint that was "argumentative, prolix, replete with
 12 redundancy, and largely irrelevant"). The second amended complaint suffers from the same
 13 conclusory and redundant statements as the original and first amended complaints. While there
 14 appears to be some allegation regarding a deliberate indifference to serious medical needs and
 15 retaliation, the court cannot decipher the circumstances surrounding each specific incident, nor
 16 can the court determine what the specific acts or omissions of each defendant were that allegedly
 17 violated plaintiff's civil rights. For example:

18 Plaintiff alleges on May 2, 2008, while imprisoned at Salinas Valley State
 19 Prison Defendant Debra Tyler, Family Nurse Practitioner, violated plaintiff's
 20 Eighth Amendment rights to adequate medical care for his serious medical
 21 needs and as the direct and proximate cause of Defendant Tyler's inadequate
 22 medical care plaintiff sustained additional cervical spine damage. In Tyler's
 23 failing to perform her legally required duties to prevent violations of
 24 plaintiff's rights on May 18, 2008 where plaintiff fell in the shower while
 25 attempting to go from his wheelchair to a shower bench.

26 (Second Amended Complaint at 19.) "[A] plaintiff's obligation to provide the grounds of his
 27 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of
 28 the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a
 right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 553-
 56 (2007) (citations omitted). The court has give plaintiff two opportunities to state cognizable
 claims for relief. As plaintiff did not cure the deficiencies in his original or amended complaints,

1 there is no reason to assume that he could or would do so with further leave to amend.

2 Consequently, this action will be dismissed.

3 **CONCLUSION**

4 Plaintiff's second amended complaint is DISMISSED. The clerk shall terminate all
5 pending motions and close the file.

6 IT IS SO ORDERED.

7 DATED: 10/4/10
8 _____

Ronald M. Whyte
RONALD M. WHYTE
United States District Judge